

3 FAM 6160

DISABILITY RETIREMENT UNDER FSRDS, FSRDS OFFSET, AND FSPS

(CT:PER-763; 02-02-2015)
(Office of Origin: HR/RET)

3 FAM 6161 PURPOSE

(CT:PER-763; 02-02-2015)
(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)
(Applies to Foreign Service Employees)

- a. Establishes the criteria for participants under the FSRDS, FSRDS Offset, and FSPS regarding eligibility requirements for disability retirement; an application for disability retirement; guidance on computing a disability annuity; and the terms and conditions regarding when a disability annuity is terminated and when a disability annuitant is reinstated.
- b. The term "disability" under this section applies only to entitlement to a disability annuity under the FSRDS, FSRDS Offset, or FSPS. Therefore, it does not mean that a participant may be entitled to veterans or Social Security benefits based on total disability or disability clauses under private insurance policies.
- c. It is Department of State policy to provide employees with disabilities with reasonable accommodation, which may include potential reassignment to an appropriate position within the same agency (see 3 FAM 3670).
- d. A participant who meets the eligibility requirements for disability retirement may elect to retire voluntarily in lieu of disability retirement if the participant meets the eligibility requirements for an immediate voluntary retirement.

3 FAM 6161.1 Authorities

(CT:PER-763; 02-02-2015)
(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)
(Applies to Foreign Service Employees)

The authorities for disability retirement under the Foreign Service Retirement and Disability System (FSRDS), the Foreign Service Retirement and Disability System Offset (FSRDS Offset), and the Foreign Service Pension System (FSPS) are found in sections 808, 855, 859, and 904 of the Foreign Service Act of 1980, as amended, and Department of State Delegation of Authority No. 372.

3 FAM 6161.2 Definitions

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

Medical documentation: A statement from a licensed physician, which may be supplemented by a statement from another appropriate practitioner that provides information necessary to determine an employee's entitlement to a disability retirement. This includes:

- (1) A history of the specific medical condition(s), including any references to findings from previous examinations, treatment, and responses to treatment;
- (2) Clinical findings from the most recent medical examination, including any of the following that have been obtained: findings of a physical examination; results of laboratory tests; copies of X-rays; an EKG report or other special evaluations or diagnostic procedures; and, in the case of a psychiatric disease, the findings of a mental status examination and the results of psychological tests;
- (3) Diagnosis;
- (4) Assessment of the current clinical status and plans for future treatment;
- (5) An estimate of the date of full or partial recovery, if any recovery is anticipated;
- (6) An explanation on the effect of the medical condition related to the performance of duties; and
- (7) Narrative explanation regarding the medical basis for any finding that warrants duty restrictions or accommodations and its therapeutic or risk avoiding value.

Useful and efficient service:

- (1) Acceptable performance of the critical or essential elements of the job; and
- (2) A satisfactory conduct and attendance.

3 FAM 6162 RESPONSIBILITIES

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. **Office of Retirement (HR/RET):** The Office of Retirement is responsible for receiving applications for disability retirement; ensuring that applications are complete; obtaining the supervisor's statement in cases of applications filed by an agency; maintaining the applicant's file; and communicating with an

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

applicant or his or her designee.

- b. **Principal Deputy Assistant Secretary for Human Resources (HR/PDAS):** The Principal Deputy Assistant Secretary for Human Resources is responsible for rendering disability retirement determinations.
- c. **Director General of the Foreign Service and Director of Human Resources (Director General):** The Director General of the Foreign Service and Director of Human Resources is responsible for rendering decisions on disability retirement requests for reconsideration.
- d. **Office of Medical Services (MED):** The Office of Medical Services is responsible for scheduling medical examinations when necessary and for providing advice and recommendations to the HR/PDAS and/or Director General, as appropriate.

3 FAM 6163 ELIGIBILITY REQUIREMENTS

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

a. FSRDS Participants:

- (1) A participant must be eligible for disability retirement when both of the following conditions are met:
 - (a) The participant becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant); and
 - (b) The participant has at least five years of creditable service toward retirement under the system (excluding credit for military and naval service).

b. FSRDS Offset Participants:

- (1) A participant must be eligible for disability retirement when both of the following conditions are met:
 - (a) The participant becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant); and
 - (b) The participant has at least five years of creditable service toward retirement under the system (excluding credit for military and naval service).
- (2) Social Security Requirement:
 - (a) Before payment of a disability annuity can be authorized for an FSRDS Offset participant, the participant must provide HR/RET with

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

satisfactory evidence that the participant has filed an application for disability insurance benefits under section 223 of the Social Security Act or an official statement from the Social Security Administration that the individual is not insured for disability insurance benefits as defined in section 223(c)(1) of the Social Security Act;

- (b) A disability retirement application will be dismissed when HR/RET is notified by the Social Security Administration that an application for disability insurance benefits has been withdrawn. All rights to an FSRDS Offset disability retirement annuity terminate upon withdrawal of an application for Social Security disability benefits; and
- (c) A participant, who is under the age of 62 and is eligible for Social Security disability benefits, must notify HR/RET of increases to the participant Social Security disability payment. The participant must report the increase by submitting a copy of the proof of income letter from the Social Security Administration at the time the increase becomes effective. Failure to provide proper documentation is grounds for suspending the payment of a disability retirement annuity.

c. FSPS Participants:

- (1) A participant must be eligible for disability retirement when both of the following conditions are met:
 - (a) The participant becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury; and
 - (b) The participant has at least 18 months of creditable service toward retirement under the System (excluding credit for military and naval service).
- (2) Social Security Requirement:
 - (a) Before payment of a disability annuity can be authorized for a FSPS participant, the participant must provide HR/RET with satisfactory evidence that the participant has filed an application for disability insurance benefits under section 223 of the Social Security Act or an official statement from the Social Security Administration that the individual is not insured for disability insurance benefits as defined in section 223(c)(1) of the Social Security Act;
 - (b) A disability retirement application will be dismissed when HR/RET is notified by the Social Security Administration that an application for disability insurance benefits has been withdrawn. All rights to an FSPS disability retirement annuity terminate upon withdrawal of an application for Social Security disability benefits; and
 - (c) A participant, who is under the age of 62 and is eligible for Social Security disability benefits, must notify HR/RET of increases to the participant Social Security disability payment. The participant must

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

report the increase by submitting a copy of the proof of income letter from the Social Security Administration at the time the increase becomes effective. Failure to provide proper documentation is grounds for suspending the payment of annuity.

3 FAM 6164 APPLICATION AND SUPPORTING DOCUMENTATION

3 FAM 6164.1 Time Limit On Application

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. Except as provided in subsection (c) below, an application must be filed before the employee is separated from service or within one year thereafter. An application for disability retirement is considered filed:
 - (1) On the date on which it is received;
 - (2) If the application is sent via facsimile, the date of the facsimile;
 - (3) If the application is mailed, the date is determined by the postmark date;
 - (4) If the application is mailed without a legible postmark, the date of filing is five days prior to its receipt (excluding days on which the employing agency is closed for business); or
 - (5) If the application is sent by commercial overnight delivery, the date of filing is the date the application was given to the overnight delivery service.
- b. An application for disability retirement that is filed within one year after the employee's separation, and that is incompletely executed or submitted in a form not prescribed, is deemed timely filed, provided that proper documentation is executed and submitted within one year of the employee's notification by the Department of the application's deficiencies.
- c. The Director General may waive the one year time limit, if the employee is mentally incompetent on the date of separation or within one year thereafter. In such a situation, the application may be accepted, if filed within one year from the date the employee is restored to competency or a guardian is appointed, whichever is earlier.
- d. An application for disability retirement may be voluntarily withdrawn by the filer any time prior to the date on which the HR/PDAS renders a decision on his or her application.

3 FAM 6164.2 Filing Applications

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

A disability retirement application may be filed by:

- (1) The participant;
- (2) A guardian, when a participant has been adjudged to be incompetent; or
- (3) The human resources office of the employing agency.

3 FAM 6164.2-1 Disability Retirement Applications Filed by Participant

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. **Application:** A participant, who is applying for disability retirement, must submit Form DS-5004, Application for Retirement, to HR/RET in the Department. If participant is not employed by the Department, then the participant must submit this form to the human resources office of the employing agency.
- b. **Supporting Documentation:** The participant should submit the following documentation with his or her application:
 - (1) A description from the participant on the nature of disability and a full explanation on the manner in which it affects performance of duties;
 - (2) A statement by a licensed physician describing the disability (Form DS-5024, Physician Statement in Connection with Disability Retirement); and
 - (3) A narrative statement from the participant's immediate supervisor regarding his or her performance of their official duties, attendance, etc. and the agency's efforts to accommodate the participant (Form DS-5023, Superior Officer's Statement in Connection with Disability Retirement, must be used for this purpose).

3 FAM 6164.2-2 Disability Retirement Applications Filed by Guardian

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. **Application:** A guardian, who is applying for disability retirement on behalf of a participant, must submit Form DS-5004, Application for Retirement, to HR/RET in the Department. If the participant is not employed by the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

Department, then the participant must submit this form to the human resources office of the employing agency.

- b. **Supporting Documentation:** The guardian should submit the following:
- (1) Evidence of guardianship;
 - (2) A description from the guardian of the participant's disability and a full explanation of the manner in which it affects his or her performance of duties;
 - (3) A statement by a licensed physician describing the disability (Form DS-5024, Physician Statement in Connection with Disability Retirement); and
 - (4) A narrative statement from the participant's immediate supervisor regarding his or her performance of their official duties, attendance, etc. and the agency's efforts to accommodate the participant (Form DS-5023, Superior Officer's Statement in Connection with Disability Retirement, must be used for this purpose).

3 FAM 6164.2-3 Disability Retirement Applications Filed by Agency

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. **Requirements:** The human resources office of any employing agency may initiate an application for disability retirement on behalf of a participant under all of the following conditions (for State Department, the application is initiated in consultation with HR/ER and MED):
- (1) The agency has issued a proposal to remove the employee (such application must be withdrawn if the proposal is withdrawn or denied and none of the other conditions in this subsection are met);
 - (2) The agency has a reasonable basis to conclude that disease, illness, or injury may be the cause of unacceptable performance, attendance, or conduct which renders the employee unable to work or to work satisfactorily; or
 - (3) If the employee is incompetent and there is no guardian willing to file an application on the employee's behalf.

NOTE: Such office must observe the following procedures before filing an application to retire an employee on disability retirement when the employee fails to apply on his or her own. An application may be initiated on the basis of supervisory observation, job performance, attendance records, knowledge of illness, accident, hospitalization, or upon other documented evidence. Supervisors may provide such information or documentation to the appropriate human resources office, but may not initiate an application for disability

UNCLASSIFIED (U)

retirement for a subordinate.

- b. **Counseling:** An officer from an appropriate agency will counsel an employee or guardian, as may be appropriate, regarding the following before proceeding with an agency-initiated action:
 - (1) An employee has a right to make a request for reasonable accommodation so that the employee can perform the essential functions of the employee duties (see 3 FAM 3670); and
 - (2) The availability of other retirement options and the associated retirement procedures.
- c. **Designation of a Representative:** The employee will be advised of the right to designate a representative, who will advise and assist or represent the employee on any matters relating to the proposed application. The designated representative will receive copies of notices, determinations, decisions, or any other written communications pertinent to the action being taken by the appropriate agency.
- d. **Employee Notification and Response:** The participant or representative, as may be appropriate, will be notified in writing by HR/RET that an application for disability retirement has been initiated on the participant's behalf. The participant or representative will be given 15 days to submit an optional written response, including any medical documentation. If an agency-initiated application is not accompanied by medical documentation regarding the participant, the HR/RET notification must direct that the participant report to MED for a physical examination. In this circumstance, if the participant refuses a medical examination, the HR/PDAS must deny the application. However, refusal to submit to a medical examination may result in disciplinary procedures against a participant.
- e. **Department Review and Determination:** After receipt of such response from the participant or representative, or 15 days after such notice is given and no response is received, the Medical Director will submit a written report to the HR/PDAS as provided in 3 FAM 6164.3. The HR/PDAS will then determine whether the participant should be retired.
- f. **Findings:** When a disability retirement determination is made by the HR/PDAS, the participant or representative will be advised in writing of that finding and the reasons therefore; and the participant's or representative's right to request reconsideration by the Director General.

3 FAM 6164.3 Examination and Reports

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. **Physical Examination:** Findings of disability will be based on physical

UNCLASSIFIED (U)

examinations by one or more duly qualified physicians or surgeons. MED must determine whether the medical documentation submitted by the participant is sufficient. If it is not, MED may request that the participant provide additional medical documentation. If appropriate, MED may invite the participant to report to a MED physician for a physical examination. In the case of an agency-initiated application, refusal to submit to a medical examination may result in disciplinary procedures leading to adverse action against an employee.

- b. **Medical Report:** The Medical Director must submit a written report through HR/RET to the HR/PDAS, setting forth the findings of the examination conducted under subsection (a) above and the results of a review of any other medical information concerning the employee. The medical report will include all pertinent data on all disabling conditions found or alleged to exist. The report must also contain statements on the following points:
- (1) Whether the employee is totally disabled or incapacitated for useful and efficient service (if not, the report must state the extent to which the disability or incapacity affects duties necessary for useful and efficient service);
 - (2) If the employee is a participant in FSRDS or FSRDS Offset, any factors or information relating to whether the disability or incapacity was caused by disease, illness, or injury that was due to vicious habits, intemperance, or willful conduct;
 - (3) Whether the disability or incapacity is permanent or, if potentially non-permanent, whether the disability or incapacity is expected to last at least one year (if the condition is not expected to last at least one year, the report must state the expected amount of time until a significant degree of recovery is likely); and
 - (4) Whether the physical examination may be conducted by or under the direction of a physician retained by the Medical Director or by one or more duly qualified physicians or surgeons.

3 FAM 6165 DETERMINATION AND RECONSIDERATION

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

Determination: The entire case file, including comprehensive medical reports and MED statements, will be reviewed by the HR/PDAS, who makes the determination of whether the employee is eligible for disability retirement. This determination must be conveyed in a letter which informs the employee of the determination, the effective date of the retirement (if applicable), and explains the employee's right to request reconsideration in writing to the Director General:

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

- (1) **Reconsideration:** A participant who is dissatisfied with one of the determinations made under the provisions in the first paragraph of this section, may request reconsideration;
- (2) A request for reconsideration must be submitted within 30 days following the date the participant received the initial determination, unless prior to the expiration of the 30 days an extension is granted by the Director of HR/RET because (1) the participant is able to show he or she was not notified of the deadline and was not otherwise aware of it or (2) the participant was prevented by circumstances beyond his or her control from making the request within the time permitted. This request for reconsideration must be filed within 30 days, even if the participant has advised that further medical documentation will follow. The request for reconsideration must be in writing and must contain:
 - (a) Participant's name, address, date of birth, and social security number;
 - (b) A full statement of the reasons for seeking reconsideration; and
 - (c) Any pertinent data or information the participant desires to submit.
- (3) When the participant has introduced new evidence for reconsideration or if the agency has received new information, the agency may submit the new information on the employee's behalf;
- (4) The Director General reviews all requests for reconsideration under this section, taking into account all of the evidence and information submitted by the participant, all of the information previously considered by the HR/PDAS, and any additional information submitted by the appropriate agencies. The Director General may request additional examinations as deemed necessary; and
- (5) On the basis of this review, the Director General makes the final determination, which must be in writing and include a statement of findings and conclusions and the reasons therefore. The notice of decision must also inform the employee that he or she have the right to file a grievance.

3 FAM 6166 DATE OF SEPARATION, COMMENCEMENT DATE, AND COMPUTATION OF DISABILITY ANNUITY

3 FAM 6166.1 Date of Separation

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

Upon the approval by the HR/PDAS or Director General of a disability retirement, the date of separation is established as follows (except that a participant cannot be continued in a pay status past the end of the month during which the participant reaches mandatory retirement at age 65):

- (1) If the participant is on approved leave without pay, the date of separation is retroactive to the last day the participant was in pay status;
- (2) If the participant is on approved sick leave, the date of separation is the day sick leave expires, unless the participant elects to cancel sick leave. The effective date is then established when the participant ceases sick leave status;
- (3) If the participant is working on the date of approval, the participant must promptly relinquish official duties. The participant may apply for and may be granted the maximum amount of sick leave to which the participant is entitled. The effective date of separation in such case is the day the sick leave expires.
- (4) If the participant is participating in the Voluntary Leave Transfer Program (VLTP), leave donated may not be used for any purpose beyond the end of the pay period in which the disability was approved. If there is excess donated leave, it must be returned to the donors through the appropriate process and cannot be included in the lump-sum payment. The effective date is:
 - (a) The last day of the pay period in which the approval was granted; or
 - (b) If the participant has available non-VLTP sick leave, the participant may apply for and may be granted the maximum amount of such sick leave to which the participant is entitled. The effective date of separation in such case is the day the sick leave expires.

3 FAM 6166.2 Commencement Date

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

A disability annuity commences on the day after the participant separates or the day after pay ceases and the participant is approved for disability retirement.

3 FAM 6166.3 Computation of Disability Annuity

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. **FSRDS Participants:** The annuity of a participant approved for disability retirement is computed as prescribed in section 806 of the Foreign Service Act; however, if the participant has less than 20 years of service credit toward retirement under the FSRDS at the time of retirement, the annuity is computed on the assumption that the participant has 20 years of service, except that the additional service credit that may accrue to a participant in this case must not exceed the difference between the participant's age at the time of retirement and 60 years of age. However, if a participant retiring under 10 U.S.C. 1223 (formerly Chapter 67) is receiving retired pay or retainer pay for military service (except that specified in section 5 U.S.C. 8332(c)(1) or (2)) or pension or compensation from the Veteran's Administration in lieu of such retired or retainer pay, the annuity of the participant must be computed without the extra service credit authorized by this paragraph and also excluding credit for military service from that computation. If the amount of the annuity computed, plus the retired or retainer pay that is received, or that would be received but for the application of the limitation in 5 U.S.C. 5532, or the pension or compensation from the Veteran's Administration in lieu of such retired or retainer pay, is less than the annuity that would be payable under this paragraph in the absence of the previous sentence, an amount equal to the difference must be added to the annuity computed under this paragraph.
- b. **FSRDS Offset Participants:** The annuity of a participant under a disability retirement is computed as provided in subsection (a) above, except the annuity is reduced (offset) when the employee becomes eligible for Social Security. The offset is applied as of the 1st day of the month during which the participant is entitled to disability annuity under FSRDS and is entitled, or on proper application would be entitled, to disability benefits under Social Security. If the participant is not entitled to Social Security disability, there is no offset until or unless the participant later becomes entitled to Social Security.
- c. **FSPS Participants:**
- (1) **Participants Under Age 62:** If a participant is under 62 years of age and not eligible for an immediate annuity, for the period beginning on the date that the disability retirement annuity commences, or is restored, the annuity must be equal to 60 percent of the annuitant's average high-3 salary during the first 12 months of disability. After the first 12 months up until 62 years of age, the annuity must be reduced to 40 percent of the annuitant's average high-3 salary.
 - (2) **Participants at Age 62:** If a participant is already 62 years of age or meets the requirements for an immediate annuity (50 years of age and 20 years of service), the participant's annuity must be that earned annuity.

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

- (3) **Redetermination at Age 62:** Effective on and after the annuitant's 62nd birthday, the rate of annuity payable to a disability annuitant will be the amount of an annuity computed with respect to the annuitant, including credit for all service before the annuitant's 62nd birthday during which the annuitant was entitled to a disability retirement annuity. The average pay used in computing the annuity is adjusted by all cost-of-living increases effective under 5 U.S.C. 8462(b) during the time the annuitant was receiving the disability retirement annuity.
- (4) **Reduction for Social Security Benefits:** For any month in which an annuitant is entitled to both a disability retirement annuity as computed under paragraph (1) and to a disability insurance benefit under section 223 of the Social Security Act, the annuitant's annuity for such month must, if such month occurs during the first 12 month period, be reduced by 100 percent of the annuitant's assumed disability insurance benefit for such month, and if such month occurs after the 12 month period, be reduced by 60 percent of the annuitant's assumed disability insurance benefit for such month.

3 FAM 6167 ANNUAL REVIEW, AND REINSTATEMENT OR REAPPOINTMENT OF RECOVERED FOREIGN SERVICE ANNUITANTS

3 FAM 6167.1 Annual Review

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. **Permanent Disability Cases:** Whenever an annuitant's disability is determined to be permanent, the annuitant is not given a medical examination again unless:
 - (1) In the opinion of the HR/PDAS, such action is warranted by unforeseen circumstances or conditions subsequently found to exist; or
 - (2) The annuitant submits a request for medical re-examination to the HR/PDAS, and the HR/PDAS grants that request.

NOTE: No medical review will take place after the annuitant reaches 60 years of age under FSRDS or 62 years of age under FSRDS Offset and FSPS.

- b. **Non-Permanent Disability Cases:** Whenever an annuitant's disability is determined to be potentially non-permanent, the annuitant must undergo a medical examination at the end of one year from the date of disability retirement and annually thereafter unless, following such an annual review, the HR/PDAS determines the disability to be permanent, or until the annuitant

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

reaches 60 years of age under FSRDS or 62 years of age under FSRDS Offset and FSPS:

- (1) **Medical Review:** When the disability has been determined to be potentially non-permanent, the Director of HR/RET must notify the annuitant of the annual requirement to undergo a medical re-examination and to submit documentation of that examination to MED prior to each anniversary date of the disability retirement;
- (2) **Medical Report:** The Medical Director will make a written report through HR/RET to the HR/PDAS, setting forth the results of the examination. The report must also contain statements on the following points:
 - (a) Whether the employee is totally disabled or incapacitated for useful and efficient service (if not, the report must state the extent to which the disability or incapacity affects duties necessary for useful and efficient service);
 - (b) If the employee is a participant in FSRDS or FSRDS Offset, any factors or information relating to whether the disability or incapacity was caused by disease, illness, or injury that was due to vicious habits, intemperance, or willful conduct;
 - (c) Whether the disability or incapacity is permanent or, if potentially non-permanent, whether the disability or incapacity is expected to last at least one year (if the condition is not expected to last at least one year, the report must state the expected amount of time until a significant degree of recovery is likely); and
 - (d) Whether the Medical Director's report is based on physical examinations by one or more duly qualified physicians or surgeons.

NOTE: At any time on the basis of additional medical examinations, the Medical Director may submit a recommendation to the HR/PDAS that an annuitant's disability is permanent and requires no further annual medical examination.

- (3) **Determination of Disability Status:** Upon review of the Medical Director's report, the HR/PDAS determines whether the employee is eligible to be reinstated. If not, the HR/PDAS determines whether the disability is permanent or continues to be potentially non-permanent;
- (4) **Notice to Annuitant:** HR/RET notifies the annuitant in writing of the foregoing determinations;
- (5) **Failure to Submit to Medical Review:** If a disability annuitant fails to submit to the annual medical review required under this section, payment of the annuity is suspended until such examinations are completed and continuance of the disability or incapacity is satisfactorily established.

3 FAM 6167.2 Reinstatement or Reappointment of

3 FAM 6160 Page 14 of 16

UNCLASSIFIED (U)

Recovered Foreign Service Annuitants

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. Whenever, on the basis of a medical examination, the HR/PDAS determines that an annuitant has recovered to the extent that the annuitant can return to duty, the annuitant may, within a period of one year from the date on which recovery is determined, apply for reinstatement or reappointment in the Service. Application should be made to the human resources office of the annuitant's previous employing agency. For the Department, application should be made to the Bureau of Human Resources, Office of Recruitment, Examination, and Employment.
- b. Reappointments of recovered annuitants are not subject to limitations found in 3 FAM 2131.1, sub-sections 6 and 8. Time while on approved disability retirement must be excluded from time in class and time in service calculations.
- c. If for any reason a recovered disability annuitant, whose annuity is discontinued, or is not reinstated or reappointed in the Service, the annuitant is considered to have been separated as of the date on which the participant was retired under disability. In such event, after discontinuance of the disability annuity, the participant is entitled to a lump-sum payment of retirement contributions. Alternatively, the annuitant may elect to leave his or her own contribution in the Fund and apply for voluntary retirement under Section 811 of the Foreign Service Act, if eligible, or a deferred annuity under Section 810 of the Foreign Service Act.
- d. Payment of the annuity continues until six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier.

3 FAM 6168 ELECTION BETWEEN THE FOREIGN SERVICE RETIREMENT ANNUITY AND WORKER'S COMPENSATION

(CT:PER-763; 02-02-2015)

(State/USAID/BBG/Commerce/Foreign Service Corps-USDA)

(Applies to Foreign Service Employees)

- a. A participant who is disabled or injured in the line of duty may not receive both a disability retirement annuity and compensation for work injuries under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101-8150, for the same period of time. A participant may elect to receive whichever benefit is more advantageous and may change such election from time to time.
- b. If a participant elects workers compensation benefits under FECA, the

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

participant may also apply for retirement upon separation, but annuity payments are suspended during the period the participant is receiving compensation under FECA. By so applying, the participant will protect annuity rights along with any survivor rights under the Foreign Service Act, should workers' compensation payments cease or be reduced. If the participant does intend to apply for a Foreign Service retirement, a participant may elect a refund of the participant Foreign Service retirement contributions. If the participant applies for and receives a refund, the participant and survivor(s) will forfeit any right to a retirement annuity based on the service covered by the refund.

- c. The general bar against receipt of annuity and compensation at the same time is subject to the following exceptions:
 - (1) An employee receiving compensation benefits as a result of the death of another person may also receive annuity under the Foreign Service Act on the basis of creditable service; and
 - (2) The right of any person entitled to an annuity under the Foreign Service Act is not affected because that person has received:
 - (a) A scheduled disability award under 5 U.S.C. 8107 for the loss of a bodily member; or
 - (b) A lump sum commuted payment under 5 U.S.C. 8135 of a monthly compensation award for work injuries.
- d. However, if a Foreign Service annuity is payable on account of the same disability for which monthly compensation was awarded under FECA, in order to qualify for the Foreign Service annuity, the annuitant must reimburse to the Office of Workers' Compensation Programs, Department of Labor, that portion of the payment (as determined by the Secretary of Labor) that begins on or beyond the effective date of the Foreign Service annuity.

3 FAM 6169 UNASSIGNED